

Opinion No. 2013-096

November 13, 2013

Ian W. Vickery, Prosecuting Attorney  
13<sup>th</sup> Judicial District  
307 American RD, Suite 114  
El Dorado, Arkansas 71730

Dear Mr. Vickery:

I am writing in response to your request for my opinion on several questions you have posed relating to the following expressed concerns:

Our office is attempting to clear up perceived ambiguities regarding the duties of the Prosecuting Attorney as to offenses/violations of state and/or city laws occurring within the limits of an incorporated city. Our office's position is that Ark. Code Ann. § 16-21-103 does not require us to commence and prosecute, at the very least, traffic violations and municipal ordinance violations, as neither the state nor county are "concerned" with these classes of cases. Our office does recognize that misdemeanor violations of state statutes occurring within municipal limits may concern the state and, thus, be prosecutable by our office.

With regard to these concerns, you have posed the following questions:

1. Which, if any, of the following types of cases occurring within the boundaries of a municipality within a prosecuting attorney's judicial district is the prosecuting attorney *required by law* to commence and prosecute: a) misdemeanor violations of state statutes; b) traffic violations not defined by the Arkansas Criminal Code; and/or c) violations of ordinances enacted by a municipality?

2. Conversely, is the city attorney of the municipality *required by law* to commence and prosecute any of the three classes of cases referenced in question one above?

## **RESPONSE**

With respect to your first question, a prosecuting attorney may, at his election, prosecute city misdemeanors, but he is not obliged to do so. A prosecutor is not authorized to prosecute violations of municipal ordinances or traffic laws not defined by the Criminal Code. With respect to your second question, a city attorney is charged with the responsibility to commence and to prosecute all three types of cases listed, subject only to the condition that the prosecuting attorney may, at his election, pursue the prosecution of a city misdemeanor.

***Question 1: Which, if any, of the following types of cases occurring within the boundaries of a municipality within a prosecuting attorney's judicial district is the prosecuting attorney required by law to commence and prosecute: a) misdemeanor violations of state statutes; b) traffic violations not defined by the Arkansas Criminal Code; and/or c) violations of ordinances enacted by a municipality?***

As an initial matter, I must address your suggestion that your questions relate to “a difference of opinion between our office and the local District Judge as to the demarcation of the respective duties of the Prosecuting Attorney of a particular judicial district and the city attorney of a city therein.” I have no details regarding the precise nature of this disagreement, nor does it fall within the scope of an Attorney General’s opinion to explore such a dispute. I will merely note that I am neither authorized nor situated to second-guess judicial officials in the exercise of their discretion. Accordingly, the following analysis should be read only within the context in which it is offered – namely, as a general exposition of the prosecutorial duties – assigned by statute to prosecuting attorneys and city attorneys, respectively – relating to the recited offenses committed within cities.

Subject to this proviso, in my opinion, a prosecuting attorney may elect to commence and to prosecute city misdemeanors, but he is not obliged to do so. He is foreclosed, however, from commencing and prosecuting actions involving alleged violations of city ordinances or traffic violations.

Section 16-21-103 of the Code, which you cite in your request, provides as follows: “Each prosecuting attorney shall commence and prosecute all criminal actions in which the state or any county in his district may be concerned.”<sup>1</sup> For purposes of addressing all three parts of your question, I will consider this statute in conjunction with two others. First, A.C.A. § 16-21-115, cited elsewhere in your statement of background facts, provides as follows:

A prosecuting attorney may designate the duly elected or appointed city attorney of any municipality within the prosecutor’s district to prosecute in the name of the state in the district and city courts violations of state misdemeanor laws, which violations occurred within the limits of the municipality, if the city attorney agrees to the appointment.<sup>2</sup>

Secondly, A.C.A. § 16-21-150 provides as follows: “No prosecuting attorney shall prosecute city misdemeanor cases or appeals to circuit or appellate courts unless the prosecuting attorney consents to do so.”<sup>3</sup>

As reflected in the underscored phrase in your question, you are concerned to determine what cases arising within municipal boundaries your office is *required* to commence and prosecute for violations of laws designated as misdemeanors, traffic violations and city ordinance violations.

With respect to the prosecution of misdemeanor violations occurring within city limits,<sup>4</sup> this office has found numerous occasions to discuss the interaction of the statutes quoted above, specifically focusing on the allocation of responsibilities between a prosecuting attorney and a city attorney. The following excerpt summarizes the consensus regarding this issue:

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<sup>1</sup> A.C.A. § 16-21-103 (Repl. 1999).

<sup>2</sup> A.C.A. § 16-21-115 (Supp. 2011).

<sup>3</sup> A.C.A. § 16-21-150 (Repl. 1999).

<sup>4</sup> A “misdemeanor” is one variety of offense “for which a sentence to a term of imprisonment or fine or both is authorized by statute.” A.C.A. § 5-1-105 (Repl. 2006). A “city misdemeanor” is one committed within the boundaries of a municipality, *see* Ops. Att’y Gen. Nos. 2001-298, 2000-069; and 95-235.

This office recently opined that the phrase “city misdemeanor cases,” as used in A.C.A. § 16-21-150, means cases involving violations of state misdemeanor laws occurring within the limits of the municipality. *See* Op. Att’y Gen. 95-235.<sup>5</sup> . . . That opinion also stated that city attorneys are required, due to the enactment of A.C.A. § 16-21-150, to prosecute city misdemeanor cases, whether in corporate or juvenile courts, and appeals of city misdemeanor cases to circuit courts, unless, in each case, the prosecutor “consents” to prosecute such cases.

As explained in Op. Att’y Gen. 95-235, the enactment of A.C.A. § 16-21-150 effected two changes in the law. First, it relieved prosecutors of the responsibility of prosecuting city misdemeanor cases. Under prior law, prosecutors had that responsibility, but could delegate it, to the extent such prosecutions occurred in municipal or other corporation courts [now district courts, see Ark. Const. Amend. 80], to city attorneys under A.C.A. § 16-21-115 if the city attorney consented. As interpreted by Op. Att’y Gen. 95-235, the enactment of A.C.A. § 16-21-150 relieved prosecutors of the responsibility of prosecuting city misdemeanor cases by implicitly repealing the last clause of A.C.A. § 16-21-115, which formerly permitted city attorneys to decline to be designated to prosecute city misdemeanor cases. As stated in the opinion, ***city attorneys are now responsible for prosecuting city misdemeanor cases***, whether in municipal or other corporation courts, or in juvenile courts.<sup>6</sup>

Another of my predecessors elaborated on this summation by addressing as follows the situation in which the prosecuting attorney and the city attorney might disagree regarding who bears responsibility to proceed:

[N]umerous Attorney General opinions, in addressing the respective duties of the prosecuting attorney and the city attorney, have made statements to the effect that city attorneys are “required” or are

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<sup>5</sup> Because of its direct pertinence to the issues you have raised, I have attached this opinion for your convenience.

<sup>6</sup> Op. Att’y Gen. No. 95-243 (emphasis added; brackets in original); *accord* Ops. Att’y Gen. Nos. 2001-298 and 2001-272.

“charged with the responsibility” of handling misdemeanor cases, including appeals of these cases to circuit court. *See, e.g.,* Ops. Att’y Gen. Nos. 2003-002; 2001-298; 2001-272; 2000-291; 2000-069; 97-226; 95-243; 95-235. These opinions for the most part were addressing questions of ultimate responsibility – that is, whether the prosecuting attorney or the city attorney can ultimately be required to handle the cases in question regardless of his or her preference. The referenced statements in these opinions seem to have arisen out of factual situations in which both the prosecuting attorney and the city attorney preferred not to handle the cases. ***In such a scenario, the prosecuting attorney’s preference will prevail. It was in that sense that the opinions stated that the city attorney was “required” to handle the cases.***<sup>7</sup>

In the opinion just quoted, my predecessor opined that “the enactment in 1993 of A.C.A. § 16-21-150 was clearly intended to charge the city attorney with the responsibility of prosecuting city misdemeanors as defined above unless the prosecuting attorney consented to do so instead.”<sup>8</sup> In accordance with this conclusion, my predecessor opined, and I fully concur, that A.C.A. § 16-21-150 repealed by implication the provision in A.C.A. § 16-21-115 providing that a city attorney might decline to undertake the prosecution of a city misdemeanor.<sup>9</sup>

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<sup>7</sup> Op. Att’y Gen. No. 2004-207 (emphasis added); *accord* Op. Att’y Gen. Nos. 2003-002 (“[T]he legislature has imposed upon city attorneys the responsibility for prosecuting misdemeanor state law violations that occur within city limits, *see* A.C.A. § 16-21-150.”) In Opinion 2004-207, my predecessor further offered the following regarding this office’s prior formulations:

These opinions were not addressing scenarios in which both the prosecuting attorney and the city attorney preferred to handle the cases in question. It is my opinion that in such a scenario, the prosecuting attorney’s preference will again prevail over the city attorney’s, because, as discussed above, ***the language of the pertinent statutes plainly grants the prosecuting attorney the discretion to decide whether to handle these cases or to delegate them to the city attorney.***

*Id.* (emphasis added).

<sup>8</sup> *Accord* Op. Att’y Gen. No. 2000-069 (addressing the legislative history of A.C.A. § 16-21-150 as reflecting an intention to impose “a duty to prosecute misdemeanor violations of state law that occurred within city limits . . . upon the city attorney”).

<sup>9</sup> *See* Op. Att’y Gen. No. 95-363 (opining that “the legislative intent of A.C.A. § 16-21-150 was to relieve prosecuting attorneys of the responsibility of prosecuting misdemeanor state law violations that occur

Consequently, as one of my predecessors has pointed out, “the city cannot simply ‘shift the burden’ to prosecute violations of state law that occur within the city’s limits.”<sup>10</sup>

You have further asked whether a prosecuting attorney is required to commence and to prosecute cases involving violations of municipal ordinances and/or local traffic laws not defined by the Criminal Code. In my opinion, a prosecutor is neither required nor authorized to pursue such cases. As one of my predecessors aptly observed:

[P]rosecutors have never had authority to prosecute violations of city ordinances. The jurisdiction of prosecuting attorneys is explicitly set forth in A.C.A. § 16-21-103. . . . The unambiguous language of that statute clearly indicates that prosecuting attorneys’ jurisdiction . . . encompasses only state and county matters. Moreover, in practice, prosecutors have never prosecuted or attempted to prosecute violations of city ordinances.<sup>11</sup>

I agree in all respects with this summation, which applies to violations of all city ordinances, including local traffic laws.<sup>12</sup>

***Question 2: Conversely, is the city attorney of the municipality required by law to commence and prosecute any of the three classes of cases referenced in question one above?***

As reflected in my response to your first question, in my opinion, a city attorney is obligated to commence and to prosecute city misdemeanors unless the prosecuting attorney elects to do so. A city attorney is further obligated to commence and to prosecute the latter two varieties of cases recited in your question – namely, traffic

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within city limits, and to impose that responsibility upon city attorneys”). As my predecessor noted in Opinion No. 95-243, “few, if any, prosecutors have consented, under A.C.A. § 16-21-150, to prosecute all city misdemeanor cases in all forums.”

<sup>10</sup> Op. Att’y Gen. No. 97-226, citing Op. Att’y Gen. No. 95-235.

<sup>11</sup> Opinion No. 95-235.

<sup>12</sup> See Op. Att’y Gen. No. 98-215 (opining that cities are empowered “to prescribe penalties for violations of city ordinances, and to prosecute to enforce those ordinances.”). As my predecessor pointed out, these powers are expressly granted by A.C.A. §§ 14-55-501, -502 (Repl. 1998) and -601 (Supp. 2011).

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violations not defined by the Criminal Code and violations of municipal ordinances.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL  
Attorney General

DM:JHD/cyh

Enclosure